IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 77 of 1983

BHIYA RAM
V/S
REGISTRAR COOPERATIVE SOCIETIES

Mr. KC SAMDARIYA, for the appellant / petitioner

Mr. SG OJHA, for the respondent

Mr. HR SONI, ADDL.G.A.

Date of Order : 5.7.2006

HON'BLE SHRI N P GUPTA,J.

JUDGMENT

This appeal has been filed by the plaintiff. The suit has been dismissed by the learned trial court under O. 7 Rule 11 C.P.C., on the application filed by the defendant, vide order dt. 3.1.1979. That order has been upheld in appeal by the learned lower Appellate Court.

The plaintiff had filed the suit for declaration and injunction, praying, that the order passed by the Asst. Registrar Co-Operative Societies under Section 74 of the Rajasthan Cooperative Societies Act be declared improper and contrary to law, and the injunction has been claimed to the effect, that in compliance of the aforesaid decree passed under Section 74(2), the attachment made, be quashed, and the agricultural land be released from attachment, and the defendants be restrained from effecting

any recovery in future.

The allegations of the plaint, interalia are, that the defendant no. 2 is a registered cooperative society, whose main object is to disburse loan for agricultural purposes, by obtaining loan from the Central Cooperative Bank, within the territorial jurisdiction of the society. The plaintiff was treasurer of the society, having been elected in the joint meeting, held on 31.5.1970. By a subsequent meeting certain members were inducted in this society, numbering 42, and on their application, short term loans were sanctioned, and sanction was recommended to be obtained from Central Cooperative Bank. Accordingly the Bank sanctioned loan on 2.8.1971, in the sum of Rs. 2,77,000/- out of which a sum of Rs. 1,90,000/- was received. It is then alleged, that the auditor found, that out of 42 persons, 33 members, who were purportedly inducted, are fake persons, and a sum of Rs. 49250/- was thus fraudulently withdrawn, and therefore, proceedings under Section 74 of the Act were recommended. Accordingly claim was filed under Section 74. According to the plaintiff, in that claim proceedings, the Assistant Registrar Cooperative Societies enquired into the matter, and in the judgment, without any independent enquiry, without any acceptance of liability by the plaintiff, and without giving any reasons in support of the liability of the plaintiff, he was held liable for a sum of Rs. 29550/-,

and interest. In execution of that order the agricultural land of the plaintiff has been attached. In para-10 various grounds have been raised as to how the plaintiff is not liable, e.g. other persons being liable, or about the plaintiff being not sufficiently literate, or the like. Thus, the proceedings taken by the Assistant Registrar are alleged to be arbitrary and capricious. Interalia with these averments, the relief has been claimed. The plaintiff has filed the certified copy of the said order of the Assistant Registrar, which is available on record, at page C-9.

The defendant no.2, the cooperative society, submitted its written statement on 6.4.1978, contesting the suit by taking different pleadings, which need not detain me in the moment, as the suit has been dismissed under O. 7 Rule 11.

It was on 31.8.1978, that the defendant no.1, the Registrar Cooperative Societies, filed an application under O. 7 Rule 11 C.P.C., contending interalia that a suit for cancellation of decree passed under Section 74(2) cannot be entertained in view of the provisions of Section 145 of the Cooperative Societies Act. It may be mentioned here, that the learned counsel for the respondent submitted, that mention of Section 145 is an accidental slip, and the correct section should be Section 137(3) of the Act. A

reply to this application was filed by the plaintiff, on 26.10.1978, simply denying the averment of the application.

Learned trial court, as noticed above, dismissed the suit, accepting this application under O. 7 Rule 11 by holding, that by virtue of Section 137(3) of the Act, the suit is barred, apart from the fact, that the plaintiff, if aggrieved of the order, could file appeal before the competent authority. The learned lower Appellate court has affirmed the order, though giving some additional reasons as well.

This appeal was filed on 18.5.1983, and came to be admitted on 19.5.1983, by framing the following substantial question of law :-

> "Whether the suit filed by the plaintiff was barred on account of the provisions of Section 137 of the Rajasthan Cooperative Societies Act.?"

Arguing the appeal, it was submitted by the learned counsel for the appellant, that no notice was given by the Assistant Registrar, before passing the order dt. 28.2.1976, and therefore, the proceedings are violative of principles of natural justice. The other submission made is, that since the written statement had already been filed, the suit could not, and in any case should not, have been dismissed under O. 7 Rule 11, and should have been

tried on merits. Third submission made is, that in the circumstances of the present case the agricultural land of the plaintiff should not have been ordered to be attached.

In other words, no submission has been made by the learned counsel for the appellant, as to how the orders of the learned courts below, holding the suit to be barred by Section 137(3) of the Act is bad, or as to how, on the face of language of Section 137(3), the present suit is maintainable. In view of the above factual situation, of no submission having been made on the substantial question of law, as framed, I need not go into the submissions made by the learned counsel for the appellant.

However, still if the case is seen on merits, it may be noticed, that a look at the order of the Assistant Registrar, Cooperative Societies dt. 28.2.1976, shows that it has clearly been recited therein, that the appellant was held liable as he admitted his liability. It has clearly been held as under:-

" श्री पुराराम एवं श्री भींयाराम ने अपने संयुक्त आवेदन दिनांक शून्य जो दोनों ने अदालत में स्वयं पेश होकर प्रस्तुत किया था, में अपने अपराध को स्वीकार किया हैं एवं 49,250/- के गलत वितरण के लिये दोनों ने अपने आपको उत्तरदायी माना हैं। दिनांक 6.2.76 को अपनी उपस्थिति के वक्त दोनों आरोपित व्यक्तियों ने इस उत्तरदायित्व कों स्वयं में बांटने हेतु एक सप्ताह का अवसर चाहा ....."

Thus, it is clear, that the plaintiff did appear in the proceedings, took part in the proceedings, and admitted the liability. Significantly, it is no where the case of the plaintiff, that this recital is wrong. Then, a look at the provisions of Section 137(3) of the Act does clearly show, that it completely bars the maintainability of such suit, challenging any order passed under the provisions of the Act, save as otherwise provided in the Act. Admittedly the order dt. 28.2.1976 has been passed under Section 74 of the Act, and that is appelable under Section 124 of the Act.

Thus, the net result is that I do not find any error in the impugned orders, and the substantial question of law framed, is answered against the appellant. The appeal is, therefore, dismissed. The parties shall bear their own costs.

(N P GUPTA),J.

/Sushil/